

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIAM WARREN BOOTH,

Plaintiff,

v.

CITY OF RENO,

Defendant.

Case No. 3:22-CV-00532-LRH-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

Before the Court is Plaintiff William Warren Booth's ("Booth"), application to proceed *in forma pauperis* (ECF No. 2), and civil rights complaint, (ECF No. 2-1). For the reasons stated below, the Court recommends that Booth's *in forma pauperis* application, (ECF No. 2), be denied as moot, and his complaint (ECF No. 2-1), be dismissed without prejudice and without leave to amend.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to the LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the

¹ This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with
3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely
5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Booth cannot pay the filing fee,
8 thus the Court recommends that Booth not be assessed the filing fee and the motion be
9 denied as moot. (ECF No. 2.)

10 **II. SCREENING STANDARD**

11 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
12 provides, in relevant part, that "the court shall dismiss the case at any time if the court
13 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a
14 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
15 who is immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when
16 "it lacks an arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325
17 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims
18 against defendants who are immune from suit or claims of infringement of a legal interest
19 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
20 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
21 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
22 standard applied in the context of a motion to dismiss under Federal Rule of Civil
23 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which
24 requires dismissal where the complaint fails to "state a claim for relief that is plausible on
25 its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

26 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
27 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
28 accept as true all well-pled factual allegations, set aside legal conclusions, and verify

1 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.
 2 662, 679 (2009). The complaint need not contain detailed factual allegations, but must
 3 offer more than “a formulaic recitation of the elements of a cause of action” and “raise a
 4 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is
 5 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies
 6 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
 7 Still, a liberal construction may not be used to supply an essential element of the claim
 8 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is
 9 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice
 10 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
 11 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

12 **III. SCREENING OF COMPLAINT**

13 In his complaint, Booth sues Defendant City of Reno under 42 U.S.C. § 1983.
 14 (See ECF No. 2-1.) Booth’s complaint, while vague, seems to assert a due process
 15 violation based on what he states is a wrongful arrest and directly relates to his underlying,
 16 ongoing criminal case. (*Id.* at 3-5.) Booth requests monetary damages. (*Id.* at 9.)

17 It appears that Booth is asking the court to intervene in ongoing state criminal
 18 proceedings. However, the *Younger* abstention doctrine prevents federal courts from
 19 interfering with pending state criminal proceedings even if there is an allegation of a
 20 constitutional violation, unless there is an extraordinary circumstance that creates a threat
 21 of irreparable injury. *Younger v. Harris*, 401 U.S. 37 (1971). The Supreme Court has
 22 stated that “federal-court abstention is required” when there is “a parallel, pending state
 23 criminal proceeding.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013); *see also*
 24 *Heck v. Humphrey*, 512 U.S. 477, 487 n.8 (1994) (noting that when a state criminal
 25 defendant brings a federal civil rights lawsuit while his criminal charges are pending,
 26 abstention is “an appropriate response to the parallel state-court proceedings”).

27 To determine if *Younger* abstention applies, federal courts look to whether the
 28 state criminal proceeding is “(1) ongoing, (2) implicate[s] important state interests, and

(3) provide[s] an adequate opportunity... to raise constitutional challenges.” *Herrera v. City of Palmdale*, 918 F.3d 1037, 1044 (9th Cir. 2019) (internal quotation marks omitted); see also *Younger*, 401 U.S. 37. The Ninth Circuit also requires that “[t]he requested relief must seek to enjoin—or have the practical effect of enjoining—ongoing state proceedings.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) (citing *AmehsourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007)). Because it appears Booth’s criminal case is still pending, all prerequisites of the *Younger* abstention doctrine are present. Booth is the subject of an ongoing criminal proceeding in state court that has not reached final adjudication. The State of Nevada has an important interest in protecting the public through the prosecution of criminal proceedings. Further, the state court criminal proceedings would afford an opportunity for Booth to raise the constitutional claims asserted in the Complaint.

Accordingly, the Court recommends that the complaint be dismissed without prejudice and without leave to amend.

IV. CONCLUSION

For good cause appearing and for the reasons stated above, the Court recommends that Booth’s application to proceed *in forma pauperis*, (ECF No. 2), be denied as moot, and his complaint, (ECF No. 2-1), be dismissed without prejudice and without leave to amend.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be entitled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities for consideration by the District Court.

2. This Report and Recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court’s judgment.

1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Booth's application to proceed *in forma*
3 *pauperis*, (ECF No. 2), be **DENIED AS MOOT**;

4 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 2-
5 1); and,

6 **IT IS FURTHER RECOMMENDED** that Booth's complaint, (ECF No. 2-1), be
7 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND.**

8 **DATED:** December 13, 2022.

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10 **UNITED STATES MAGISTRATE JUDGE**
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